

ARTURO GARZA #1452776 §  
v. § CIVIL ACTION NO. 9:13cv74  
GARY HUNTER, ET AL. §

The Plaintiff Arturo Garza, proceeding *pro se*, filed this civil rights lawsuit under 42 U.S.C. §1983 complaining of alleged violations of his constitutional rights in the Texas Department of Criminal Justice, Correctional Institutions Division. This Court ordered that the case be referred to the United States Magistrate Judge pursuant to 28 U.S.C. §636(b)(1) and (3) and the Amended Order for the Adoption of Local Rules for the Assignment of Duties to United States Magistrate Judges.

Garza filed two identical cases, civil action no.'s 9:13cv72 and 9:13cv74. The Magistrate Judge observed that Garza may have sent two copies of his lawsuit to the Court, which were then inadvertently opened as two separate cases. The Magistrate Judge issued a Report on May 31, 2013, recommending that cause no. 9:13cv74 be dismissed as duplicative and that this dismissal not count as a strike for purposes of 28 U.S.C. §1915(g). The Magistrate Judge also recommended that the filing fee paid in the present case be applied to case no. 9:13cv72 and that no further fees be charged in case no. 9:13cv74.

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by the district court. Douglass v. United Services Automobile Association, 79 F.3d 1415, 1430 (5th Cir. 1996) (*en banc*).

The Court has reviewed the pleadings in this cause and the Report of the Magistrate Judge. Upon such review, the Court has determined that the Report of the Magistrate Judge is correct. *See United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir.), *cert. denied*, 492 U.S. 918, 109 S.Ct. 3243 (1989) (where no objections to a Magistrate Judge's Report are filed, the standard of review is "clearly erroneous, abuse of discretion and contrary to law."). It is accordingly

ORDERED that the Report of the Magistrate Judge (docket no. 10) is hereby ADOPTED as the opinion of the District Court. It is further

ORDERED that the above-styled civil action be and hereby is DISMISSED without prejudice as duplicative. It is further

ORDERED that the dismissal of this cause shall not count as a strike for purposes of 28 U.S.C. §1915(g). It is further

ORDERED that the \$4.00 received from Garza on May 22, 2013, with regard to cause no. 9:13cv74 shall be credited toward Garza's filing fee in cause no. 9:13cv72, and that no further funds shall be withdrawn from Garza's account with respect to cause no. 9:13cv74. A copy of this order shall be sent to the TDCJ-ID Office of the General Counsel, P.O. Box 13084, Austin, Texas 78711, and the TDCJ Local Funds Division, P.O. Box 629, Huntsville, Texas 77342-0629, to ensure that Garza's account is properly charged. This order shall not otherwise affect the collection of funds for cause no. 9:13cv72. Finally, it is

ORDERED that any and all motions which may be pending in this action are hereby DENIED.

So **ORDERED** and **SIGNED** on July 21, 2013.



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Ron Clark, United States District Judge